KUNDANG LAKES COUNTRY CLUB BHD

v.

GARDEN MASTERS (M) SDN BHD

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
SITI NORMA YAAKOB JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: B-02-412-1996]
8 APRIL 1999

LAND LAW: *Caveat - Caveatable interest - Claim for an alleged debt - Whether can give rise to caveatable interest*

The appellant was the registered owner of lands on which was located a golf and country club. The respondent contractors had entered into a contract with the appellant to do turfing work at the golf course. Upon completion, disputes arose as to payment for work done. The respondent claimed a balance of RM668,011.03 outstanding which was wholly denied by the appellant. A winding-up petition initially filed by the respondent against the appellant was subsequently withdrawn but was replaced by a suit claiming the same amount. In addition, the respondent entered a private caveat over the appellant's lands. The appellant filed an originating summons to remove the caveat contending that the respondent did not have a caveatable interest over its lands since its claim was for an alleged debt. The respondent on the other hand contended that the appellant had given an undertaking that it would sell the lands to repay the balance claimed which was the basis of the caveat being lodged. The respondent further contended that the undertaking gave rise to a proprietary estoppel and thus a constructive trust existed to enable the respondent to lodge the caveat. The learned judge dismissed the appellant's application holding, *inter alia,* that there were disputed issues in the affidavits which gave rise to serious issues to be tried.

Held:
Per Shaik Daud Ismail JCA

[1] The only issue for the learned judge to decide in the originating summons was whether the respondent had a caveatable interest over the appellant's lands. The learned judge had failed to consider this.

[2] There were no merits in the contention of the respondent. The undertaking or representation was a bare allegation. The appellant was a private limited company, but there was no evidence as to the identity of the person or persons who could have made the alleged representation on behalf of the appellant.

[3] A claim for a mere debt cannot give rise to a caveatable interest. The respondent's interest was purely monetary and as it had instituted a claim for the recovery of the alleged debt, which was seriously contested by the appellant, the respondent had no caveatable interest over the appellant's lands.

[Appeal allowed; private caveat to be removed with damages to be assessed and paid to the appellant.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu adalah pemilik berdaftar tanah yang mana terdapatnya sebuah kelab desa dan golf. Responden, sebuah kontraktor, telah memasuki sebuah kontrak dengan perayu untuk menjalankan kerja "turfing" di padang golf tersebut. Setelah siap kerja-kerja itu, perselisihan telah timbul di antara kedua-dua pihak berkenaan jumlah yang masih terhutang. Pihak respondent menuntut jumlah sebanyak RM668,011.03 yang mana dinafikan oleh perayu. Satu petisyen untuk menggulungkan syarikat perayu selanjutnya telah ditarik balik oleh responden tetapi diganti oleh satu tindakan guaman yang menuntut jumlah yang sama. Tambahan, responden telah memasuki satu kaveat persendirian ke atas tanah perayu. Perayu telah memfailkan saman pemula untuk mengeluarkan kaveat tersebut dengan menegaskan bahawa responden tidak mempunyai sebarang kepentingan untuk dikaveat ke atas tanahnya kerana tuntutan responden adalah untuk hutang yang dinyatakan kena dibayar. Responden pula menegaskan bahawa perayu telah memberi akujanjinya untuk menjual tanah tersebut untuk menyelesaikan jumlah yang dituntut dan inilah dasar kepada kemasukan kaveat tersebut. Responden selanjutnya menegaskan bahawa representasi tersebut telah menimbulkan "proprietary estoppel" dan satu amanah konstruktif telah wujud untuk membolehkan responden memasuki kaveat itu. Yang arif hakim telah menolak permohonan perayu dengan memutuskan, di antara lain, bahawa terdapat isu-isu yang dipertikaikan di dalam afidavit yang mana menimbulkan isu-isu penting yang perlu dibicarakan.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Isu tunggal untuk diputuskan oleh yang arif hakim di dalam saman pemula itu adalah samada responden terdapat kepentingan untuk dikaveat ke atas tanah perayu. Yang arif hakim telah langsung gagal untuk mempertimbangkan isu ini.

[2] Tidak terdapat apa-apa merit di dalam penegasan responden. Representasi yang dinyatakan adalah alegasi semata-matanya. Perayu adalah sebuah syarikat sendirian berhad, tetapi tiada bukti mengenai pihak atau pihak-pihak yang mungkin telah membuat representasi yang dinyatakan bagi pihak perayu.

[3] Tuntutan untuk satu hutang tidak boleh menimbulkan satu kepentingan untuk dikaveat. Kepentingan responden adalah semata-mata sifat kewangan dan oleh kerana satu tuntutan telah dimulakan untuk mendapat kembali hutang yang dinyatakan, yang mana adalah dipertikaikan dengan tegas oleh perayu, responden tiada kepentingan untuk dikaveat ke atas tanah perayu.

[Rayuan dibenarkan; kaveat persendirian adalah dikeluarkan dengan gantirugi ditaksirkan dan dibayar kepada perayu.]

Case(s) referred to:
Registrar of Titles Johore v. Temenggong Securities Ltd [1976] 2 MLJ 44 ***(foll)***
Trans-Summit Sdn Bhd v. Chun Nyook Lin (P) [1996] 3 CLJ 502 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 28 r. 8

For the appellant - Liza Chan; M/s Harun Idris, Yeoh & Partners
For the respondent - K Nadarajah (AG Kalidas with him); M/s K Nadarajah & Partners

[Appeal from High Court, Shah Alam; Originating Summons No: 24-461-95]

Reported by Cindy Chan

JUDGMENT

Shaik Daud Ismail JCA:

This is an appeal from the decision of the Shah Alam High Court which had dismissed the appellant's originating summons for the removal of a private caveat entered by the respondent over the appellant's lands.

The appellant is a registered owner of all lands comprised in H.S.(D) 21918 up to H.S.(D) 21921 in the Mukim of Rawang, Selangor, on which is situated a golf course and country club called the Kundang Lakes Country Club Berhad. The respondent, a firm of contractors, entered into a contract with the appellant dated 12 March 1993, whereby the respondent undertook to do turfing work at the appellant's golf course. On completion of this work, there was allegedly a balance amount of RM668,011.03 due from the appellant to the respondent. A dispute arose on this balance with the appellant denying owing the respondent any amount and resulting in the respondent filing a petition to wind-up the appellant *vide* Winding-Up Petition No. 28-4-95. This petition was strenuously contested by the appellant on the ground that no money was owing to the respondent but that the respondent had in fact been overpaid. When the petition came up for hearing, the respondent withdrew the petition. Subsequently, the respondent filed a suit against the appellant claiming the same amount as owing, which suit is pending in the Shah Alam High Court.

The respondent then entered a private caveat over the appellant's lands. The appellant then filed this originating summons to have the caveat removed. At the hearing of the originating summons, the learned judge held that there are disputed issues in the affidavits which gave rise to serious issues to be tried, and further held that in the light of this it was improper for the appellant to file the originating summons and in exercising his discretion under O. 28 r. 8, directed that the originating summons be converted into a writ.

With respect, we are of the view that the learned judge went completely off tangent in arriving at the conclusion as he did. It is plain to us that the only issue for the learned judge to decide in the originating summons, is whether the respondent has a caveatable interest over the appellant's lands. The issue appears to be quite straight forward. The respondent filed a suit against the appellant for the recovery of monies allegedly due and owing. The respondent then entered a private caveat over the appellant's lands. The appellant filed an application for the removal of the caveat on the ground that the respondent had no caveatable interest. Therefore, the only issue to be decided is whether the respondent has a caveatable interest in order for the caveat to subsist. With respect, this the learned judge failed to consider at all.

The appellant had throughout contended that the respondent had no caveatable interest over its lands since the respondent's claim is for an alleged debt or monies allegedly owing. While not seriously denying this, it was the contention of the respondent that the appellant (without condescending to particulars) had given an undertaking that it would sell all those lands in question in order to repay the balance claimed by the respondent, and it was apparently on the strength of this representation that the respondent lodged the caveat. The respondent further mentioned that the representation gave rise to a proprietory estoppel and as such there existed a constructive trust enabling the respondent to lodge the caveat.

We find no merits in the contention of the respondent. The so called representation was a bare allegation without condescending to particulars. The appellant is a private limited company, but there is no evidence as to the identity of the person or persons who could have made the alleged representation on behalf of the appellant.

It is trite law that a claim for a mere debt cannot give rise to a caveatable interest. In the case of the *Registrar of Titles Johore v. Temenggong Securities Ltd.* [1976] 2 MLJ 44, a company called Li-Ta was the registered proprietor of a piece of land in Johore. It was indebted to the Federal Government for income tax which was overdue. It then entered into an agreement to sell its land to the respondent. On completion of the sale, the Inland Revenue got wind of it and they immediately started an action for the recovery of the

overdue tax. At the same time they wrote to the registrar of Land Titles Johore to enter a registrar's caveat in respect of the land and this was done. This prevented the transfer of the lands. The respondent's application to the High Court for the removal of the caveat, was dismissed on the ground that the claim of the Federal Government to recover the overdue tax from Li-Ta Company was an interest the Federal Government was entitled to protection by the registrar's caveat. The respondent's appeal to the Federal Court was allowed, and the court directed the registrar to enter upon the register, the transfer of the titles of the lands and the discharges of the charges on those titles. The Registrar of Titles, Johore then appealed to the Privy Council. The Privy Council dismissed the appeal and in upholding the decision of the Federal Court held:

> 1) although Malaysian income tax became due and payable by the taxpayer to the Federation upon notice of assessment its legal nature was that of an unsecured civil debt. Until it was coverted into a judgment by the recovery of judgment in an action, **the unsecured civil debt gave rise to no legal rights in or over any property of the taxpayer nor to any remedies against the taxpayer's property.** It was a mere personal claim against him and did not come within the meaning of "interest" in section 320(1) of the National Land Code;
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> 2) the interests which the Registrar of Titles was empowered to protect under section 320(1)(b) were confined to interests in the land that were recognised by the Land Code as being either registrable or otherwise entitled to protection. An unsecured creditor of the proprietor of the land had no such right in the land; ... (the emphasis is ours).

Recently this court in *Trans-Summit Sdn Bhd v. Chun Nyook Lin (P)* [1996] 3 CLJ 502 held that a mere monetary claim cannot give rise to a caveatable interest over land. In that case the appellant, the owner of the land in question, had wanted to develop the land, and to that end, had allegedly promised to enter into a joint-venture agreement with the respondent's company (Airport Auto) to undertake the project. The appellant had backed out from the agreement and the respondent, thereupon, filed a suit in the High Court seeking a declaration, *inter alia*, that there existed a caveatable interest over the land. This court unanimously held that the respondent's interest lies not in the land in question but in the projects that her company hopes to gain from the joint-venture agreement with the appellant which was challenged by the appellant. Therefore as the respondent's interest was only monetary in nature she had no caveatable interest over the land.

As can be seen, the facts in the appeal before us are not so much dissimilar with the facts in the two cases cited above. It is clear that the respondent's interest lies not in the appellant's lands as to give rise to a caveatable interest.

We hold that the respondent's interest is purely monetary in nature and as it has instituted a claim for the recovery of the alleged debt, which is seriously contested by the appellant, the respondent has no caveatable interest over the appellant's lands. For the reasons appearing in this judgment we allowed the appeal with costs here and the court below, we ordered the private caveat to be removed and damages (if any) to be assessed by the registrar and to be paid to the appellant by the respondent. Lastly the deposit was ordered to be refunded to the appellant.